

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

STANFORD L. BURRIS,)	
)	
Plaintiff,)	
)	
v.)	C.A. No.: 04-1496
)	
RICHARDS PAVING, INC.)	
)	
Defendant.)	

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION IN
LIMINE TO PRECLUDE TESTIMONY AS TO LOST WAGE CLAIMS**

The plaintiff, Stanford L. Burris, responds to the Defendant's Motion in Limine to Bar Testimony Concerning the Plaintiff's Lost Wages as follows:

1. This is a claim brought under the "Americans With Disabilities Act" claiming discrimination by the defendant in failing to hire the plaintiff.
2. At the time of the alleged wrongful conduct, the plaintiff was unemployed. At the time the plaintiff applied for a truck driver's position, he had been a truck driver for approximately thirty (30) years.
3. A discovery deposition in this matter has established what the plaintiff would have earned if he had been hired by the defendant. Specifically the deposition testimony of a representative of the defendant indicates that presently truck drivers for the defendant earn between \$14 and \$17 per hour (Mollusk Depo., p. 5-6, Exhibit No. 1). Drivers with twenty (20) to thirty (30) years experience are paid at a rate of \$16 per hour (Mollusk Depo, p. 6, Exhibit No. 1).
4. In 2003 the rate for truck drivers was \$12 per hour (Mollusk Depo., p. 6, Exhibit No. 1). In addition, the defendant paid for health insurance for his drivers at the cost of \$1,400

per month (Mollusk Depo, p. 7, Exhibit No. 1). During the busy months of the year drivers average forty-five (45) to fifty (50) hours per week (Mollusk Depo, p. 9, Exhibit No. 1), which would include ten (10) hours overtime (Mollusk Depo, p. 9, Exhibit No. 1). Those drivers that were laid off because of the seasonal work would be laid off for approximately twelve (12) to fifteen (15) weeks (Mollusk Depo. p. 10, Exhibit No. 1).

5. The plaintiff was out of work for approximately one (1) year until he could find other employment.

6. Based upon the information elicited from the defendant's representative, ¶¶3 and 4, an adequate foundation would be established by which a jury could calculate the amount of lost wages and benefits that the plaintiff would have earned during his one year of unemployment, had the defendant not discriminated against him. Unlike the need to offer expert testimony as to the present value of future losses, the calculation of past lost wages, when there is an adequate factual foundation requires only simple arithmetic. That is, a reasonable jury could easily understand a calculation that a person deprived of employment for one year where the average work week was 40 to 45 hours per week, at \$12 per hour, for approximately 40 weeks a year, would result in a loss of wages that could be a simple mathematical calculation, without expert testimony.

7. In this case, the claim for damages, as to lost wages, would be for the approximately one year period of time between the time the defendant denied the plaintiff employment, and the date the plaintiff found employment.

WHEREFORE, the plaintiff requests this Court to deny the Defendant's Motion in Limine to Bar Evidence of a Loss of Income.

ABER, GOLDLUST, BAKER & OVER

/s/ Gary W. Aber

GARY W. ABER (DSB #754)

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Attorney for Plaintiff

DATED: November 8, 2006

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

STANFORD L. BURRIS,)
)
Plaintiffs,)
) Civil Action
v.) No. 04-1469 (SLR)
)
RICHARDS PAVING, INC.,)
)
Defendant.)

Deposition of DAVID MOLUSKI taken pursuant to notice at the law offices of Aber, Goldlust, Baker & Over, 702 King Street, Suite 600, Wilmington, Delaware, beginning at 2:00 p.m. on Wednesday, June 14, 2006, before Lucinda M. Reeder, Registered Diplomate Reporter and Notary Public.

APPEARANCES:

GARY ABER, ESQ.

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for the Plaintiff,

MATTHEW P. DONELSON, ESQ.

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1 the decision rests in either -- in Richard's hands.
2 It's his company.

3 Q. How many truck drivers do you presently have
4 working for you?

5 A. Right as of today, we have six.

6 Q. Has that number remained fairly constant since
7 2003?

8 A. It fluctuates depending on the time of year.

9 Q. What's the average number of drivers you have?

10 A. We try to keep four at all times.

11 Q. How high does it get during the busy season?

12 A. As many as eight.

13 Q. I gather this is a busy of time of year?

14 A. Yeah. We're looking right now. Do you know
15 anybody who is interested?

16 MR. ABER: Off the record.

17 (Discussion off the record.)

18 BY MR. ABER:

19 Q. I gather when you get into like December and
20 January that's your slow time?

21 A. Yeah. We have to lay some people off.

22 Q. What is the rate of pay that your drivers are
23 presently earning?

24 A. Presently, now, we're offering between 14 to, I



1 think 16, 17 an hour, depending on their experience,
2 how well they handle the truck.

3 Q. If somebody has been driving for 20 or 30
4 years, do they get \$16?

5 A. Yeah. If I could find them. I wish I could.

6 Q. What was your rate of pay for drivers in 2003?

7 A. The best of my recollection, somewhere around
8 11, \$12 an hour.

9 Q. So it's progressed from 11, \$12 an hour up to
10 14 to 16?

11 A. Yes. Correct.

12 Q. The drivers get any benefits other than just
13 salary for working?

14 A. All drivers are hired. We hire them as what's
15 considered full-time seasonal. And full-time seasonal
16 carries no benefits. If they're there for a number of
17 years, then we'll consider making them full-time
18 year-round. Full-time year-round receives benefits.

19 Q. What kind of benefits?

20 A. Health insurance. Richard pays -- I believe
21 the average employee pays like thirty-some dollars for
22 health insurance a week. Richard pays the remainder.
23 You get five personal days.

24 Q. The health insurance, the employees pay \$30?



CERTIFICATION OF SERVICE

The undersigned hereby certifies that two copies of the attached pleading were hand delivered and sent via electronic filing on November 8, 2006 to the following counsel:

Matthew P. Donelson, Esquire
Elzufon, Austin, Reardon,
Tarlov & Mondell
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P.O. Box 1630
Wilmington, DE 19899

/s/ Melissa A. Chionchio
Melissa A. Chionchio
Secretary to Gary W. Aber, Esquire